

Support Notes on Commissioner's Advice

Direction 7: Previous applications

Introductory note - the nature of Direction 7.

It is important to remember that Direction 7 is an essentially procedural measure. The questions it poses are technical in nature and are not related to the merits of the case. Inspectors should not allow their views on the merits of the case to sway their judgement one way or the other.

1. "Within 26 weeks"

See section 2(vii) below for when the 26 week period begins.

2. Types of application to be disregarded.

Paragraph 2150 of the *Social Fund Guide* includes a briefer list of types of previous application that should be disregarded.

(i) Incomplete applications.

According to the *Social Fund (Applications) Regulations 1988*, an application shall be deemed incomplete if it appears to the Secretary of State that either:

- The application form has not been completed according to the instructions given; or
- It contains insufficient information to enable "any material question to be determined."

Such an "application" has no standing in law. It cannot be regarded as a "previous application" for the purposes of Direction 7.

(ii) Applications withdrawn before a decision was made.

Direction 7 applies only in relation to previous applications for which a payment has been awarded or refused. If an application was withdrawn before a decision was made, a payment will not have been awarded or refused.

(iii) Extinguished awards.

According to the *Social Fund (Miscellaneous Provisions) Regulations 1990*, an award of a social fund payment shall be extinguished:

- Where the applicant has been offered a loan but has failed to notify the Secretary of State of his agreement to the terms and conditions of the loan within the specified time (14 days unless specially extended).
- Where the applicant or third party has failed to present their giro within 12 months of issue.

An award that has been extinguished in this way does not count as an "application... for which a payment has been awarded or refused" for the purposes of Direction 7.

(iv) Applications to which Direction 7 has been applied.

Where a decision-maker has applied Direction 7 to a particular item or service, there has been no determination to award or refuse a payment. There has merely been a determination to apply Direction 7. Such a case cannot be regarded as an “application... for which a payment has been awarded or refused” for the purposes of any future consideration of Direction 7. The implications of this advice are explained in the following example.

Example:

May 2000 - Ms F applies for a grant for a cooker. An award is refused.
Sept 2000 - She makes a new application in September for a cooker and a fridge. Direction 7 is applied to her application for a cooker. The fridge is refused on priority.
Jan 2001 - She applies once again for a cooker and a fridge. There has still not been any relevant change in her circumstances.

Direction 7 applies to the fridge, but not to the cooker. This is because, although it is less than 26 weeks since her September application, no determination was made to award or refuse a payment for a cooker in September. The last application for which a payment was awarded or refused for this item was made in May 2000, which is more than 26 weeks ago.

Note on jurisdiction

A determination to apply Direction 7 is within the Inspector’s jurisdiction to review, just like a determination to award or refuse a payment.

(v) Any application made by someone other than the current applicant.

The wording of Direction 7 leaves open the possibility that the “previous application” could have been made by someone other than the applicant (e.g. his partner). The Direction says only that it must be for the same item or service. However the empowering provision in the Act (Social Security Contributions and Benefits Act 1992, s.140(4)(a)) specifies that the previous application must be made by the same person. Direction 7 must be interpreted within the framework of this primary legislation.

(vi) Previous applications that were still awaiting an initial decision at the time the current application was made.

The Direction says that “a decision maker shall not determine an application... made within 26 weeks of a previous application... for which a payment has *already* been awarded or refused...” (emphasis added). This means that where the current application was made before an initial decision had been made on the previous application, all the tests of Direction 7 are not met. This applies even if, by the time the decision maker receives the case, a decision has been made on the previous application.

Example:

Monday Mrs J applies for a grant for bedding (app 1).

Wednesday	Mrs J makes a new application for a grant for bedding (app 2).
Thursday	A DM decides to refuse application 1 for bedding.
Friday	Another DM deals with application 2. Direction 7 should not apply because at the time that Mrs J <i>made</i> her second application, a payment had not yet been awarded or refused.

(vii) “Previous” applications that were made on the same day as the current application.

Section 3 of the *Social Fund (Applications) Regulations 1988*, sets out how it should be decided at what time an application is to be treated as made. These regulations refer only to the *date* on which the application was received at an appropriate office. No provision is made for distinguishing between applications made earlier or later on the same day. For this reason, Inspectors should treat applications made on the same day as simultaneous. One cannot be said to be “previous” to another, so Direction 7 cannot apply.

The 26 week period only begins to run from the day after the initial application was made.

Example: Mr R applies for a grant for a wardrobe at 10 am. A decision is made immediately to refuse him. He comes back to the office in the afternoon, having consulted the CAB, and applies for a crisis loan for the same item. Direction 7 does not apply because applications made on the same day should be treated as simultaneous and because the 26 week period has not yet started.

Conflated applications

There may also be *exceptional* circumstances where an SFI can treat two applications made within a few days of each other as one whole application. For example:

- Where the DM and RO have treated the two applications as one;
- Where the Inspector has reason to consider that the two applications are actually part of the same transaction, e.g. where the applicant has been advised by a local office to complete a second application form because the earlier form has been mislaid.

3. Crisis loans and community care grants

No support notes.